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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MARIEKE JOHANNA CATHARINA VAN LIEMPD,
ABRAHAM FRANCISCUS MARIA HENDRIKS,
JUDITH MARIA TRIPPELVIZT, LOTTE VAN LIER,
NINA ROELANDE HORSTRA,
WILLEMIJN ELISE DAMAI PRINS, and
LUCIUS THEODORUS VINKENVLEUGEL

Appeal 2016-002860
Application 12/863,201
Technology Center 2800

Before ADRIENE LEPIANE HANLON, CATHERINE Q. TIMM, and JAMES C. HOUSEL, *Administrative Patent Judges*.

PER CURIAM.

DECISION ON APPEAL[1]

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[1] Our decision refers to Appellants' Specification filed July 16, 2010 (Spec.), the Non-Final Office Action mailed Nov. 20, 2014 (Non-Final Act.), Appellants' Appeal Brief filed May 11, 2015 (Appeal Br.), the Examiner's Answer mailed Oct. 23, 2015 (Ans.), and Appellants' Reply Brief (Reply Br.) filed Dec. 28, 2015.

STATEMENT OF THE CASE

Appellants[2] filed an appeal under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 1–11 and 13. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

The claims on appeal are directed to color selection input devices and color selection input methods (*see, e.g.*, claims 1 and 11).

Appellants disclose that modern lighting systems may create lighting atmospheres by providing different kinds of lighting, such as colored lighting. Spec. p. 1, ll. 11–12. These lighting systems include a remote control that allows the user to navigate in the hue/saturation/brightness color space to adjust the lighting settings. The user interface of the remote control includes a wheel for adjusting hue and separate buttons for adjusting saturation and brightness, respectively. Spec. p. 1, ll. 13–18. However, according to Appellants, user tests with color input devices have shown that many users have difficulty navigating to the hue/saturation color space and difficulty distinguishing between the concepts of saturation and dimming. Spec. p. 2, ll. 1–3. To address this, Appellants disclose an improved color selection input device and method in which a hue input means and saturation input means are arranged to partially overlap in an area that indicates a selected color setting in the hue/saturation color space. Spec. p. 2, ll. 11–14. As a result, users are able to intuitively navigate the hue/saturation color space and comfortably select a desired color. Spec. p. 2, ll. 15–16.

[2] Appellants identify the real party in interest as Koninklijke Philips Electronics N V. Appeal Br. 4.

Independent claim 1 is illustrative of the subject matter on appeal. Claim 1 is reproduced from the Claims Appendix of the Appeal Brief with portions at the center of the dispute emphasized:

> 1. A color selection input device comprising:
>
> *a hue selection object representing selectable colors with hue gradation along a direction thereof*;
>
> *a saturation selection object representing a selectable saturation gradation along a direction thereof*;
>
> *wherein the hue selection object and the saturation selection object are arranged to form fixed overlapping region*, and wherein the saturation selection object is transparent and shaded such that the saturation selection object varies from fully transparent to fully white in a plane by including portions of the saturation selection object in the plane that have different colors for visualizing a hue and saturation selection in the overlapping region; and
>
> an electronic circuit configured to detect positions of the hue selection object and the saturation selection object and to generate a color selection signal that depends on the detected positions.

Appeal Br. Claims Appendix 33 (emphasis added).

The claims on appeal stand rejected as follows:

(1) claims 1–11 and 13 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement;

(2) claims 1–11 and 13[3] under 35 U.S.C. § 112, second paragraph, as being indefinite;

[3] Although claim 13 is not listed in the statement of the rejection at page 22 of the Non-Final Office Action, a rejection of claim 13 is set forth at pages 25–26 of the Non-Final Office Action. Appellants identify claim 13 as rejected. Appeal Br. 13. Moreover, the Examiner lists claim 13 as rejected in the Answer. Ans. 2. Thus, the error was harmless.

(3) claims 1–3, 5–8, and 11 under 35 U.S.C. § 103(a) as being unpatentable over Tudor[4] in view of Miyazaki;[5]

(4) claims 4 and 9 under 35 U.S.C. § 103(a) as being unpatentable over Tudor in view of Miyazaki and further in view of Greenewalt;[6] and

(5) claim 10 under 35 U.S.C. § 103(a) as being unpatentable over Tudor in view of Miyazaki and further in view of Helfer.[7]

OPINION

In order to properly consider the issues in this case, it is necessary to begin by considering the intertwined issues of claim interpretation and claim indefiniteness. *See Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1567 (Fed. Cir. 1987) ("Analysis begins with a key legal question—*what* is the invention claimed?"); *In re Moore*, 439 F.2d 1232, 1235 (CCPA 1971) (stating in the context of a review of rejections under both the first and second paragraph of § 112 that "[a]ny analysis in this regard should begin with the determination of whether the claims satisfy the requirements of the second paragraph."); *Atmel Corp. v. Info. Storage Devices, Inc.*, 198 F.3d 1374, 1379 (Fed. Cir. 1999) ("an analysis under § 112, ¶ 2 is inextricably intertwined with claim construction.").

Indefiniteness

Claims 1 and 11 each recite a "hue selection object representing selectable colors with hue gradation along a direction thereof" and a "saturation selection object representing a selectable saturation gradation along a direction thereof." The Examiner determines, and Appellants do not

[4] Tudor, US 3,088,227, issued May 7, 1963 ("Tudor").
[5] Miyazaki, US 2005/0212980 A1, published Sept. 29, 2005 ("Miyazaki").
[6] Greenewalt, US 1,731,772, issued Oct. 15, 1929 ("Greenewalt").
[7] Helfer, US 2006/0211494 A1, published Sept. 21, 2006 ("Helfer").

dispute, that the "hue selection object" and "saturation selection object" clauses of claims 1 and 11 are means-plus-function clauses that must be interpreted as required by 35 U.S.C. § 112, ¶ 6. Non-Final Act. 10–11, 17–18; Appeal Br. 10, 14. However, the Examiner finds "[a] review of the specification shows no sufficiently definite corresponding structure is described for achieving the claimed functions in their entirety." Non-Final Act. 11–13.

Thus, the first step in our analysis is to "look to the specification and interpret that language in light of the corresponding structure, material, or acts described therein, and equivalents thereof, to the extent that the specification provides such disclosure." *In re Donaldson Co.,* 16 F.3d 1189, 1193 (Fed. Cir. 1994) (*en banc*). One must "determine[] whether sufficient structure was disclosed in the specification based on the understanding of one skilled in the art." *Atmel Corp. v. Info. Storage Devices, Inc.*, 198 F.3d at 1378.

Here, the Examiner fails to set forth a sufficient analysis of the relevant parts of the Specification to support the determination that the Specification does not describe sufficiently definite structure corresponding to the claimed functions. Moreover, we agree with Appellants that the Specification provides sufficient structure when read by the ordinary artisan. Appeal Br. 10–14. The Specification discloses that the hue selection means, saturation selection means, and/or the brightness selection means may be selection wheels, which may be rotated to make a selection. Spec. p. 3, l. 29 to p. 4, l. 3 and p. 8, ll. 3–15. The wheels may be mechanically rotated wheels or may be provided on a touch screen display. Spec. p. 4, ll. 27–29, p. 5, ll. 8–11, p. 7, ll. 14–22. The Specification also discloses selection bars,

which may include a potentiometer for determining the position of the bars. Spec. p. 4, ll. 7–9, p. 5, ll. 3–7. These are described as devices for inputting a color selection for a lighting system like Appellants' LivingColors™ lamp or for a TV set or computer display. Spec. p. 1, ll. 11–18; p. 7, ll. 4–12. These disclosures present structures for performing the functions recited in claims 1, 2, 11, and 13. As a result, one of ordinary skill in the art would understand the § 112, ¶ 6 recitations of claims 1, 2, 11, and 13 to be limited to those structures disclosed in the Specification and their equivalents.

Claims 3–10 recite the corresponding structures, such as selection wheels, selection bars, mechanically rotated wheels, and objects on touch screen displays for at least one of the mean-plus-function clauses of the claim from which each depends. These are sufficient structures to maintain the presumption that § 112, ¶ 6 does not apply for the particular clause of the independent claim further restricted by these dependent claims.

The Examiner more specifically rejects claims 1–11 and 13 under 35 U.S.C. § 112, second paragraph, as being indefinite, concentrating on the limitations of claims 1 and 11. Non-Final 22–26. But, again, the Examiner reads the claim language in a way divorced from the context of the Specification.

The Examiner finds the word "object" in claim 1 "lacks a structural modifier by which 'object' could be unambiguously interpreted as intending to refer to a tangible object as opposed to, e.g., a rainbow." Non-Final Act. 22–23. This finding does not set forth a prima facie case of indefiniteness because the Examiner has correctly concluded § 112, ¶ 6 applies to claim 1. Therefore, one of ordinary skill in the art would understand an "object" of claim 1 to cover those structures disclosed in Appellants' Specification for

performing the recited functions, as well as equivalents thereof, as discussed above. Those structures are tangible structures such as mechanical structures or visual representations on a touch screen that result from programming of touch screen structures.

The Examiner further finds terms such as "color," "hue," "direction," "transparent," and "white" are indefinite because they denote perceptions or concepts, the word "representing" is indefinite because it is unclear how a hue selection object represents selectable colors with hue gradation, and it is unclear how a hue selection object manifests its position. Non-Final Act. 23–24.

The test for determining the question of indefiniteness may be formulated as whether the claims "set out and circumscribe a particular area with a reasonable degree of precision and particularity." *In re Moore*, 439 F.2d 1232, 1235 (CCPA 1971). "[T]he definiteness of the language employed must be analyzed—not in a vacuum, but always in light of the teachings of the prior art and of the particular application disclosure as it would be interpreted by one possessing the ordinary level of skill in the pertinent art." *Id.* The Examiner's analysis has been performed in a vacuum without consideration of how one of ordinary skill in the art would interpret Appellants' invention, as disclosed in Appellants' disclosure, and whether the claim terms have been recited with a reasonable degree of precision and particularity. As argued by Appellants at pages 15–18, some of these terms are defined within claim 1 itself and one of ordinary skill in the art would understand the meaning and scope of the claimed terms in view of Appellants' Specification.

With regard to claim 11, the Examiner finds it is unclear how "an overlapping region is 'fixed,'" that the term "region" does not provide a sufficient structural arrangement so one of ordinary skill in the art would understand the metes and bounds of the claim, and the steps recited in claim 11 generally use vague and indefinite language. Non-Final Act. 25.

These findings are also insufficient to support a rejection for indefiniteness. As discussed above, the Examiner correctly interprets § 112, ¶ 6 to apply to the method of claim 11. The hue selection object and saturation object recited in claim 11, and therefore the fixed overlapping region provided by these objects, cover the structures disclosed in the Specification as corresponding to the recited functions, as well as their equivalents. Therefore, to the extent the language of claim 11 is vague and indefinite because it recites functions with little structure, the scope of claim 11 is outlined determined by § 112, ¶ 6 and Appellants' disclosure.

The Examiner rejects claims 2–10 for the same reasons as claim 1 and claim 13 for the same reasons as claim 11. Appeal Br. 25–26. For the reasons set forth above, we do not sustain the Examiner's rejection of claims 1–11 and 13 under 35 U.S.C. § 112, second paragraph, as being indefinite.

Written Description Rejection

Claims 1–11 and 13 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Specifically, the Examiner finds "[t]here is no written description of a sufficiently definite structure corresponding to 'object' to achieve, e.g., the function 'hue selection.'" Non-Final Act. 20.

For the reasons discussed above, the Examiner reversibly erred in finding Appellants' Specification does not set forth sufficient structure for

performing the functions recited in claims 1, 2, 11, and 13. Moreover, claims 3–10 themselves recite structures, such as selection wheels and bars, for performing the recited functions. These structures have written description support in Appellants' Specification, as discussed above with regard to the interpretation under § 112, ¶ 6 and the rejection under § 112, ¶ 2.

In addition, the Examiner finds "the written description describes features of the invention virtually entirely in terms of concepts and functions," "[t]he terms 'color wheel' 'color circle' and 'color space' are commonly understood to denote concepts. . . .'color' is commonly understood to refer to a human perception," and "[t]here is no written description of a structure by which 'color' (or selectable color) is displayed to an observer." Non-Final Act. 20–21. The Examiner further finds a circle is a geometric shape and "is not commonly understood to denote a structure" and Appellants' description of the invention's use in other devices, such as TV sets or a computer display, is unclear and does not provide structural significance for the context of the claims. Non-Final Act. 21.

These findings are insufficient to support the first paragraph rejection. The test for sufficiency of a written description is whether the disclosure '"clearly allow[s] persons of ordinary skill in the art to recognize that [the inventor] invented what is claimed.'" *Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed.Cir.2010) (en banc) (quoting *Vas–Cath Inc. v. Mahurkar,* 935 F.2d 1555, 1562–63 (Fed.Cir.1991)). The Examiner's findings parse individual terms recited in the claims or disclosed in Appellants' Specification and adopt meanings for those terms without determining whether one of ordinary skill in the art would recognize written

descriptive support for Appellants' claimed invention, particularly in view of how the invention is described in Appellants' disclosure. For example, the Examiner does not consider how a circle, such as in the form of a wheel, is described in Appellants' disclosure as an object that can be rotated, either mechanically or as an object on a touchscreen, to vary hue, saturation, or brightness. Therefore, we do not sustain the Examiner's rejection of claims 1–11 and 13 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

Obviousness Rejection of claims 1–3, 5–8, and 11

Claims 1–3, 5–8, and 11 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Tudor in view of Miyazaki. Appellants focus their arguments on the rejection of claim 1, on the rejection of claims 5 and 7 as a group, and provide additional arguments for claim 7. Appeal Br. 22–26. We select claims 1, 5, and 7 as representative for deciding the issues on appeal. The remaining claims under this rejection stand or fall with the claim from which they depend.

Claim 1

The dispositive issue on appeal is whether Appellants have identified a reversible error in the Examiner's finding that Tudor discloses a hue selection object and a saturation selection object arranged to form a fixed overlapping region, as recited in claim 1.

Appellants have not identified such an error.

The Examiner finds Tudor discloses a color selection input device including a hue selection object representing selectable colors with a hue gradation along a direction of the object, citing color band 14 of Tudor's disc 26, and a saturation selection object representing a selectable saturation

gradation along a direction of the object, citing color band 16 of Tudor's other discs. Non-Final Act. 26–27; Ans. 8, 9. The Examiner finds the discs 26, 28, and 30 overlap at band 14, citing an annotated copy of Figure 1 of Tudor. Non-Final Act. 27; Ans. 9.

Appellants contend color bands 14, 16 are different regions of the discs of Tudor and that bands 14, 16 do not overlap with each other. Appeal Br. 23; Reply Br. 8–9. Appellants argue Tudor does not provide a region where a hue selection band will overlap with a saturation selection band and bands 14, 16 are instead regions where the discs vertically align so the three colors of the discs may combine. Appeal Br. 23; Reply Br. 8–9.

Appellants' arguments do not identify a reversible error. Although the Examiner identifies band 14 as a hue selection object and band 16 as a saturation selection object, the Examiner relies upon the overlap of the three discs 26, 28, and 30 to support the rejection. Non-Final 26–28. The findings regarding the overlapping discs support the Examiner's conclusion of obviousness. The Examiner's findings in the Examiner's Answer illustrate how the color chart of Tudor includes the hue selection and saturation selection structures corresponding to Appellants' disclosure (e.g., mechanically rotatable discs), or equivalents thereof, for performing the functions recited in claim 1. Figure 1 of Tudor is reproduced below.

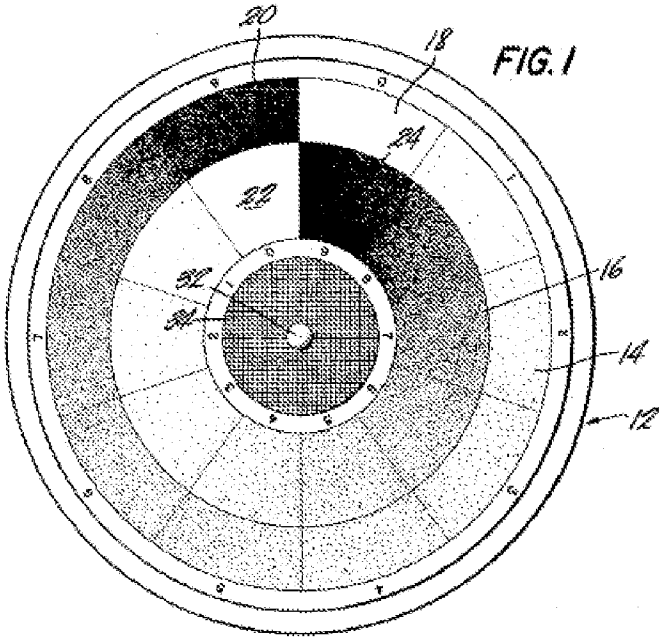

FIG. 1

Figure 1 is a plan view of a component of Tudor's color harmony chart.

Tudor discloses a color harmony chart including an outer color band 14 divided into segments of varying saturation (i.e., of increasing saturation in a clockwise direction, as shown in Figure 1) and an inner color band 16 also divided into segments of varying saturation in an opposite direction relative to band 14 (i.e., in a counterclockwise direction, as depicted in Figure 1). Tudor col. 2, ll. 41–71. Thus, saturation varies in a circumferential direction within each band 14, 16.

The color harmony chart includes three monochromatic discs (i.e., yellow, red, and blue) superimposed upon one another, as shown in Figure 2 of Tudor, which is reproduced below.

FIG. 2

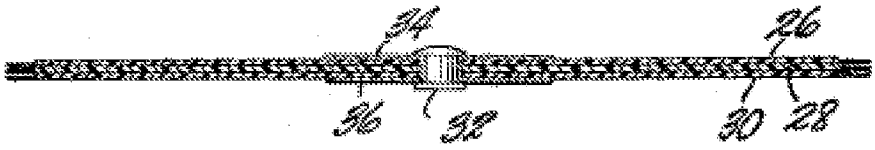

Figure 2 is a sectional view of the color harmony chart.

Tudor discloses disc 26 may be a yellow disc, disc 28 a red disc, and disc 30 a blue disc, which each vary in saturation, as shown in Figure 1, and are joined via a central pin 32 so they may be rotated relative to each other to produce various colors in one of the bands 14 and 16 and a complementary color in the other of bands 14 and 16. Tudor col. 3, ll. 48–52, col. 4, ll. 40–44. Therefore, discs 26, 28, 30 are mechanical rotation discs and have the same structure as the mechanical rotation wheels Appellants disclose[8] as structure for performing the functions recited in claim 1, or are at least equivalents thereof.

There is no dispute that each of the discs 26, 28, 30 include both hue gradation and saturation gradation. Appeal Br. 23–24; Reply Br. 8–9. Because the discs overlap, the hue selection object of one disc overlaps the saturation selection object of the other two discs.

When arguing Tudor does not disclose "hue and saturation wheels overlapping in a fixed region," Appellants state "the Tudor reference shows a *single* wheel that includes both hue and saturation." Appeal Br. 22 (emphasis added). More specifically, Appellants state "[i]n contrast, Tudor's *single* wheel that includes hue gradations and saturation gradations fails to read on *the two distinct selection objects* that are recited in the present claims" because there is no region in which a hue selection band overlaps with a saturation selection band. Reply Br. 8 (emphasis added).

By concentrating on a single disc, Appellants overlook the Examiner's findings with regard to the multiple discs. As correctly determined by the Examiner, claim 1 does not require a hue selection object to represent only hue gradation and the saturation selection object to represent only saturation

[8] Spec. p. 4, ll. 27–29.

gradation. Ans. 7. There is no dispute that each disc of Tudor includes both a hue selection object with hue gradation and a saturation selection object with saturation gradation. Thus, the overlapping discs of Tudor have overlapping regions that read on the overlapping regions of claim 1.

This is further illustrated in an example disclosed by Tudor. Tudor discloses pure yellow color is obtained by rotating the yellow disc 26 so its sector of maximum saturation in the outer band 14 (i.e., tone 9 in Figure 1) is superimposed at that location along a vertical direction (i.e., the vertical direction shown in Figure 2) with segments having zero tone (i.e., zero saturation, as depicted for tone 0 of outer band 14 in Figure 1) for the red disc 28 and the blue disc 30. Tudor col. 4, ll. 7–20. In other words, a viewer looking at the color chart will observe pure yellow at that location due to the superimposition of the particular sectors of discs 26, 28, 30 along the vertical direction. Due to this alignment of the discs, a complementary color for the pure yellow, deep purple, will be visible in the radially adjacent sector within the inner band 16 because the red disc 28 and the blue disc 30 will each have maximum saturation (i.e., tone 0 for inner band 16) at that location and the yellow disc 26 will have zero saturation (i.e., tone 9 for inner band 16). Tudor col. 4, ll. 14–20.

As for the fixed overlapping region recited in claim 1, any of the radial sectors of Tudor in either of the bands (i.e., any of tones 0–9 of outer band 14 or any of tones 0–9 of inner band 16 depicted in Figure 1) may serve as a fixed overlapping region. In Tudor's example, the complementary color, deep purple, is produced at a location within a band (e.g., within band 16 in Tudor's example) because each of the red disc 28 and the blue disc 30 has maximum saturation at the location and the yellow disc 26 has zero

saturation at the same location. Any of the discs 26, 28, 30 functions as a hue selection object, as recited in claim 1, because rotation of any disc relative to the others will alter the hue from deep purple to another color at that location. In addition, any of the discs 26, 28, 30 functions as a saturation selection object, as recited in claim 1, because each of the discs 26, 28, 30 has saturation gradation along a circumferential direction within bands 14 and 16, due to the gradation of saturation (i.e., tone) depicted in Figure 1. Even the yellow disc 26, which has zero saturation at the location where deep purple is produced, functions as a saturation selection object, as recited in claim 1.

Therefore, Appellants' argument that Tudor does not disclose or suggest a hue selection object and a saturation object arranged to form a fixed overlapping region, as recited in claim 1, does not identify a reversible error.

Claims 5 and 7

Claim 5 depends from claim 2, which depends from claim 1, and further recites, among other things, "wherein the hue selection object and the saturation selection object are implemented by respective selection wheels." Appeal Br. Claims Appendix 34. Claim 7 depends from claim 1 and includes the same recitation as claim 5.

Appellants argue the above recitation in claims 5 and 7 requires distinct, separate wheels. Appeal Br. 25; Reply Br. 9. This argument does not direct us to a reversible error in view of how the separate, distinct discs 26, 28, 30 of Tudor's color chart function, as described above.

Claim 7

Claim 7 depends from claim 1 and further recites, among other things, "wherein one of the selection wheels has a smaller diameter than the other selection wheel." Appeal Br. Claims Appendix 34.

Appellants argue the discs of Tudor have the same diameter and therefore do not disclose or suggest a disc having a smaller diameter than another disc. Appeal Br. 25. Appellants' arguments are persuasive. The Examiner does not find that any of the discs 26, 28, 30 of Tudor have a different diameter than another (one cannot say the bands 14, 16 provide different diameters because they are merely different regions of discs 26, 28, 30) and the Examiner does not provide any rationale for modifying any of Tudor's discs so one has a smaller diameter.

Therefore, we do not sustain the Examiner's § 103 rejection of claim 7 over Tudor and Miyazazki.

Obviousness Rejections of Claims 4, 9, and 10

For claims 4, 9, and 10, Appellants merely reiterate the arguments set forth in support of the patentability of claim 1 and contend Greenewalt and Helfer do not remedy the deficiencies of the references applied in the rejection of claim 1. Appeal Br. 26–30 and Reply Br. 9–10. For the reasons set forth above, there are no deficiencies in the rejection of claim 1 that require curing by Greenewalt or Helfer.

DECISION

On the record before us, we:

A. do not sustain the Examiner's decision to reject claims 1–11 and 13 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement; and

B. do not sustain the Examiner's decision to reject claims 1–11 and 13 under 35 U.S.C. § 112, second paragraph, as being indefinite;

C. sustain the Examiner's decision to reject claims 1–3, 5, 6, 8, and 11 under 35 U.S.C. § 103(a) as being unpatentable over Tudor in view of Miyazaki;

D. do not sustain the Examiner's decision to reject claim 7 under 35 U.S.C. § 103(a) as being unpatentable over Tudor in view of Miyazaki;

E. sustain the Examiner's decision to reject claims 4 and 9 under 35 U.S.C. § 103(a) as being unpatentable over Tudor in view of Miyazaki and further in view of Greenewalt; and

F. sustain the Examiner's decision to reject claim 10 under 35 U.S.C. § 103(a) as being unpatentable over Tudor in view of Miyazaki and further in view of Helfer.

We affirm-in-part the decision of the Examiner to reject the claims.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1).

AFFIRMED-IN-PART